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FOR MYSORE STATE

[Despatch Abstract.]

G.O.No.1945/15-5-50 Acts - The Indian Patents and Designs (Amendment) Act, 1950 - Recorded.

REGISTERED NO.D.28.

THE GAZETTE OF INDIA,

EXTRAORDINARY.

PART II. Section1.

PUBLISHED BY AUTHORITY.

No.3. NEW DELHI, THURSDAY, APRIL 20, ~~XXXX~~ 1950.

MINISTRY OF L.A.

NEW DELHI, THE 20TH APRIL, 1950.

The following Acts of Parliament received the assent of the President on the 13th April, 1950 and are hereby published for general information:--

THE INDIAN PATENTS AND DESIGNS(AMENDMENT) ACT, 1950.

No. XXXII OF 1950.

AN ACT FURTHER TO AMEND THE INDIAN PATENTS AND DESIGNS ACT,1911.

BE it enacted by Parliament as follows:--

1. SHORT TITLE:-- This Act may be called the Indian Patents and Designs Amendment) Act, 1950.

2. Amendment of Act II of of 1911. In the Indian Patents and Designs Act,1911 (hereinafter referred to as the said Act), for the words "the States", wherever they occur, the word"India "shall be substituted.

3. AMENDMENT OF SECTION 1, ACT II OF 1911-- In section 1 of the said Act, for sub-section (2) the following sub-section shall be substituted, namely:--

(2) It extends to the whole of India except the State of Jammu and Kashmir".

4. AMENDMENT OF SECTION2, ACT II OF 1911:- In section 2 of the said Act,

(a) for clause (7) the following clause shall be substituted, namely:--

"7) High Court' means, with reference to any area.-

a, in relation to Part A State or a Part B State, the High Court-for-that State;.

b) in relation to Ajmer, the High Court at Allahabad;

c) in relaton to Bhopal and Vindhya Pradesh, the High Court at Nagpur:

(d) in relation to [illegible], Delhi and Himachal Pradesh, the High Court of Punjab;

(e) in relation to Orissa, the High Court at Madras.

(f) in relation to Kutch, the High Court at Bombay;

(g) in relation to Manipur and Tripura, the High Court of Assam.

(h) in relation to the Andaman and Nicobar Islands, the High Court at Calcutta"

(b) after clause (7) the following clause shall be inserted, namely:—

"(7A) ' India' does not include the State of Jammu and Kashmir and

(c) clause (35) shall be omitted.

5. INSERTION OF NEW SECTION 2 A IN ACT II OF 1911 — After section 2 of the said Act, the following section shall be inserted, namely:-

"2.A RULE OF CONSTRUCTION IN APPLICATION OF ACT TO PART B STATES— In the application of this Act to any Part B State, unless the context otherwise requires,

(a) references to any enactment in force in Part A States but not in force in that Part B State shall be construed as references to the corresponding law, if any, in force in that State:

(b) references to a court or authority in existence in Part A States but not in existence in that Part B State shall be construed as references to the corresponding court or authority, if any, in that State.

6. SUBSTITUTION OF NEW SECTIONS FOR SECTIONS 22,23 and 23 A IN ACT II OF 1911— For sections 22,23 and 23 A of the said Act, the following sections shall be substituted, namely:—

" 22. APPLICATION FOR LICENCE—(1) At any time after the expiration, of three years from the date of the sealing of a patent any person interested may apply to the Controller upon any one or more of the grounds specified in sub-section (2) for a licence under the patent

(2) The grounds upon which an application under sub-section (1) may be made are as follows, that is to say:-

(a) that the patented invention, being capable of being commercially worked in India, has not been commercially worked therein or is not being so worked to the fullest extent that is reasonably practicable.

(b) that a demand for the patented article in India is not being met to an adequate extent or on reasonable terms, or is being met to a substantial extent by importation of the patented article from other countries;

(c) that the commercial working of the invention in India is being prevented or hindered by the importation of the patented article from other countries.

(d) that by reason of the refusal of the patentee to grant a licence or licences on reasonable terms--

(i) a market for the export of the patented article manufactured in India is not being supplied, or

(ii) the working or efficient working in India of any other patented invention which makes a substantial contribution to the establishment or development of commercial or industrial activities in India is unfairly prejudiced;

(e) that by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, the manufacture, use of sale of materials not protected by the patent or the establishment or development of commercial or industrial activities in India is unfairly prejudiciied.

(3) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent; and no person shall be estopped from alleging any of the matters specified in sub-section (2) by reason of any admission made by him, whether in such a licence or otherwise, or by reason of his having accepted such a licence.

(4) In this section the expression 'patented article' includes any article made by a patented process.

23. RELIEF IN RESPECT OF AN APPLICATION UNDER SECTION 22(1) Where an application is made under section 22 the Controller may make an order granting any of the following reliefs, that is to say, the

Controller may—

(a) grant a licence to the applicant upon such terms as the Controller thinks fit; and may also where the circumstances so require, direct that all other existing licences in respect of the patent shall be revoked, or that the patentee shall forfeit any right which he may have as a patentee, to make, use, exercise or vend the invention or to grant licences under the patent;

(b) revoke any existing licence held by the applicant and grant a new licence upon such terms as the Controller thinks fit, or amend any licence held by the applicant in such manner as the Controller may think fit;

(c) grant a licence under the patent to such customers of the applicant and on such terms as the Controller thinks fit, if the Controller is satisfied that the manufacture, use or sale of materials not protected by the patent is unfairly prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent or upon the purchase, hire or use of the patented article or process.

Provided that where the application is made on the ground that the patented invention is not being commercially worked in India or is not being worked to the fullest extent that is reasonably practicable and it appears to the Controller that the time which has elapsed since the granting of the patent has for any reason been insufficient to enable it to be so worked. he may, by order, adjourn the application for such period as will, in his opinion, give sufficient time for the invention to be so worked.

(2) Except in cases where the terms of a licence have been settled by mutual agreement and such terms otherwise provide, any person to whom a licence has been granted under sub-section(1) shall be entitled to call upon the patentee to take proceedins to prevent any infringement of the patent and if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as though he were the patentee,, making the

patentee a defendant and a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

23.A. ENDORSEMENT OF PATENT ON APPLICATION BY GOVERNMENT:-(1) at any time after the expiration of three years from the date of the sealing of a patent, the Central Government may apply to the Controller upon any one or more of the grounds specified in sub-section (2) of section 22 for the endorsement of the patent with the words "Licence of Right".

(2) An application under this section may also be made on the ground that by the refusal of the patentee to grant a licence or licences on reasonable terms the establishment or development of commercial or industrial activities in India is unfairly prejudiced or the development of an industry, the control of which by the Union is declared by Parliament by law to be expedient in the public interest, is being prevented or hindered.

(3) Where a patent of addition is in force, any application under sub-section (1) either for the endorsement of the original patent or the patent of addition shall be deemed to be an application for the endorsement of both the patents and where any such application is granted or refused it shall be deemed to have been granted or refused in respect of both the patents.

(4) All endorsements of patents made under this section shall be entered in the Register of Patents maintained under section 20.

(5) For the removal of doubts it is hereby declared that nothing in this section shall affect the right of the Central Government or any State Government to make an application for the grant of a licence in respect of any industrial undertaking or trading activity owned or carried on by such Government-

23-B. PROVISION AS TO PATENTS ENDORSED 'LICENCES OF RIGHT';- (1) Where the Controller has made an endorsement upon a patent 'Licences or Right'-

(a) any person shall at any time after such endorsement be entitled as of right to a licence under the patent upon such terms as in default of agreement may be settled by the Controller on the application of either the patentee or of the person applying for a licence;

(b) the Controller may, on the application of a person holding a licence granted under the patent before the endorsement, order licence to be revoked and grant a new licence by virtue of the endorsement upon terms to be settled in the aforesaid manner;

(c) if in proceedings for the infringement of the patent (otherwise than by the importation of the patented article from other countries) the infringing defendant is ready and willing to take a licence upon terms to be settled by the Controller, no injunction against him shall be awarded, and the amount recoverable against him by way of damages, if any, shall not exceed double the amount which would have been recoverable against him as licensee if the licence had been dated prior to the earlies infringement;

(d) the renewal fees payable in respect of a patent so endorsed shallm as from the date of the endorsement, be one moiety only of the fees which would otherwise have been payable.

2. The provisions of sub-section (2) of section 23 shall apply to any licence granted under sub-section(1) as they apply to a licence granted under the said section23.

23.C EXERCISE OF POWERS ON APPLICATION UNDER SECTION 22 OR SECTION 23 (1) The powers of the Controller upon an application under section 22 or section 23 A shall be exercised with a view to securing the following general purposes, that is to say,-

(a) that invention which can be worked on a commercial scale in India and which should in the public interest be so worked shall be worked therein without undue delay and to the fullest extent that is reasonably practicable;

(b) that the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the nature of the invention;

(c) that the interests of any person for the time being working or developing an invention in India under the protection of a patent is not unfairly prejudiced.

2. Subject to the provisions of sub-section(1) the Controller shall, in determining whether to make an order in pursuance of any such application or not, take account of the following matters, that is to say,-

(a) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention.

(b) the ability of any person to whom a licence is to be granted under the order to work the invention to the public advantage; and

(c) the risks to be undertaken by that person in providing capital and working the invention if the application is granted;

but shall not take account of matters subsequent to the making of the application.

23.D. PROCEDURE ON APPLICATION UNDER SECTION 22 OR SECTION 23.A. (1) Every application under section 22 or section 23 A shall specify the nature of the order sought by the applicant and shall contain a statement setting out the nature of the applicant's interest, if any, and the facts upon which the application is based.

(2) Where the Controller is satisfied, upon consideration of any such application, that PRIMA FACIE case has been made out for the making of an order, he shall direct the applicant to serve copies of the application upon the patentee and any other persons appearing from the Register or Patents to be interested in the patent in respect of which the application is made.

(3) The patentee or any other person desiring to oppose the application may, within such time as may be prescribed or within such further time as the Controller may on application made either before or after the expiration of the prescribed time allow, give to the Controller notice of opposition.

(4) Any such notice of opposition shall contain a statement setting out the grounds on which the application is opposed.

(5) Where any such notice of opposition is duly given the Controller shall notify the applicant, and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

23.E. SUPPLEMENTARY PROVISIONS WITH RESPECT TO ORDERS UNDER SECTION 23. OR SECTION 23 B. - (1) Any order made by the Controller under section 23 or section 23 B for the grant of a licence shall, without prejudice to any other mode of enforcement have effect as if it were a deed, executed by the patentee and all other necessary parties, granting a licence in accordance with the order.

(2) Notwithstanding anything contained in this Act no order shall be made in pursuance of an application under section 23 or section 23 A or section 23 B which would be at variance with any treaty, convention, arrangement or engagement applying to India and any other country.

23.F. APPEALS--(1) An appeal shall lie to the High Court at Calcutta from any order of the Controller made under section 23 or section 23 A or under clause (a) or clause (b) of sub-section (1) of section 23B

(2) Every such appeal shall be made within three months of the date of the order passed by the Controller and shall be in writing and accompanied by the prescribed fee.

(3) In calculating the said period of three months, the time, if any, occupied in granting a copy of the order appealed against shall be excluded.

23.G. PROCEDURE FOR HEARING OF APPEALS--(1) When an appeal has been preferred to the High Court at Calcutta under section 23 F, it shall be ~~excluded~~ heard by a Bench of not less than two Judges.

(2) The Bench hearing the appeal may, if it thinks fit, and shall, on the request of the parties to the appeal, call in the aid of an assessor specially qualified for the purpose, and hear the appeal wholly or partially with his assistance.

(3) The remuneration, if any, to be paid to an assessor under the section shall in every case be determined by the High Court and be paid by it as part of the expenses of the execution of this Act "

7. AMENDMENT OF SECTION 75, ACT II of 1911--In section 75 of the said Act, after clause (7) the following clause shall be inserted, namely:--

"8) application for endorsement of patent with the words 'Licences of Right"

8. AMENDMENT OF SECTION 78 A. Act II of 1911--In sub-section (4) of section 78 A of the said Act, the words " or the law of any Part B. State" and the woreds " or in that State, as the case may be" shall be omittee.

K.V.K. Sundaram.

Secretary to the Government of India.

ABSTRACT.

Acts - The Indian Patents and Designn (Amendment) Act,1950-

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